CIVIL DISTRICT COURT
PARISH OF ORLEANS
STATE OF LOUISIANA

GLORIA SCOTT AND *
DEANIA JACKSON, *
* NO. 96-8461
VERSUS * DIVISION "I"
* SECTION 14
THE AMERICAN TOBACCO *
COMPANY, INC., ET AL. *

Transcript of proceedings before the Honorable Richard J. Ganucheau, Judge Pro Tempore, Civil District Court, Parish of Orleans, State of Louisiana, 421 Loyola Avenue, New Orleans, Louisiana 70112, commencing on June 18, 2001.

* * * * *
Monday Morning Session
February 24, 2003
9:42 a.m.
* * * * *

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WILLIAM A. FARONE, Ph.D.	
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Monday Morning Session
February 24, 2003
9:42 a.m.
* * * * *
P R O C E E D I N G S
* * * * *
(In open court with a jury present:)
THE COURT:
Good morning.
Plaintiff ready to continue with the presentation of evidence?
MR. STEPHEN HERMAN:
Yes, Your Honor.
Good morning, everyone. Good morning, Your Honor. Good morning, opposing counsel. My name is Steve Herman.
And the plaintiffs' next witness is Dr. William A. Farone.
(The oath is given by the Clerk.)
THE COURT:
Good morning, Doctor. That microphone is live, so if you get a little closer to it and you speak in a normal tone of voice, everybody can hear you very well.
THE WITNESS:
Thank you very much.
THE COURT:
Mr. Herman?
MR. STEPHEN HERMAN:
Thank you.

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WILLIAM A. FARONE, Ph.D.
being first duly sworn by the Clerk, testifies and
says as follows:
-- -- --
DIRECT EXAMINATION
BY MR. STEPHEN HERMAN:
Q. Dr. Farone, you worked at Philip Morris?
A. I did.
Q. When did you work there?
A. 1976 through 1984.
Q. What do you do now?
A. I'm president and chief executive officer of a company called Applied Power Concepts, Incorporated.
Q. Are you happy with that position?
A. Yes.
Q. This isn't the first cigarette case you have testified in, is it?
A. No, it is not.
Q. How many times have you testified, approximately?
A. Thirty-five cases, I think. Something like that. Thirty to thirty-five.
Q. Not always in court. Some of it by deposition?
A. Yes.
Q. Which means that you have been cross-examined about how many times?
A. Oh, probably sixty, seventy times, something like that.
Q. Looks like the defendants have about seven boxes of cross-examination testimony. Does that

seem about right?
A. No, I would think there is a lot more than that.
Q. You don't have to testify in these cases, do you?
A. No, I do not.
Q. It's a choice you have made?
A. Yes.
Q. Why have you made that choice?
A. Basically it's what I consider to be public service.
Q. Okay. Could you give the jury a little bit more --
MR. GAY:
Objection, Your Honor. Nothing to do with qualifications.
THE COURT:
Overruled.
Next question, please?
BY MR. STEPHEN HERMAN:
Q. Would you elaborate on that a little, please?
A. Yes. I think that the fact that the cigarettes, which I understand a lot about, having worked on them and studied them, cause disease and can be improved is the reason, to explain that information to people all over the country.
Q. Are you being paid for the time that you have dedicated to be an expert in this case?
A. Yes, I am.

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30 Q. Have you always been paid for your work as an
31 expert in these cases?
32 A. No, I have not.

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1 Q. Can you tell the jury a little about that?
2 A. From 1996 through the year 2000, I convinced
3 my company that I should do this as a public service
4 without payment.
5 The burden of doing so many cases became so
6 great in the year 2000 that I was requested by my
7 associate who owns the other half of my company to
8 request remuneration for the time, only for the time
9 that I spend away from the company.
10 Q. Let's go back to the time that you were hired
11 by Philip Morris. How did you come to be hired by a
12 cigarette company?
13 A. I was sought out by Philip Morris in --
14 toward the end of 1975 by an executive search firm.
15 Q. And then what happened?
16 A. In the beginning I didn't know exactly what
17 the company was, but they were interested in my
18 background up to that particular point in my career,
19 and that they invited me for an interview in New
20 York City at the headquarters.
21 And then later I was invited for an interview
22 at the Research & Development Department in
23 Richmond, Virginia.
24 Q. Could you tell the jury a little bit more
25 about the interview in New York? Who did you meet
26 with?
27 A. I met with the then president of
28 Philip Morris U.S.A., a man by the name of Cliff
29 Goldsmith.
30 But the main part of the interview was
31 conducted by a man named Mr. Robert -- or Dr. Robert
32 B. Seligman, who at that point was going to become

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1 the vice president of research and development at
2 Richmond.
3 He was at that point working in New York
4 City, but he was going to go down to Richmond to
5 replace the then vice president of R&D, a man by the
6 name of Dr. Helmut Wakeham.
7 And Dr. Seligman was looking for a senior
8 person with my kind of background to help in changes
9 that they expected to be made within the company.
10 Q. We will get into that background in just a
11 minute.
12 Could you tell the jury about those changes
13 that they expected to be made?
14 A. Well, two things that they anticipated was
15 that they would diversify into businesses other than
16 tobacco, other than cigarettes, out of the cigarette
17 business.
18 And the second was that they would be under
19 continued pressure to make safer products, and would
20 like me to help them make the products safer, and to
21 find companies that they could purchase or otherwise
22 be involved with for diversification.
23 Q. Did you understand what your position with
24 Philip Morris was going to be?
25 A. Yes. I was told that initially I would have
26 a staff position at research and development

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27 reporting to Dr. Seligman. And then after
28 approximately one year, I would be promoted to a
29 director of research position, and gradually build
30 up a staff to take the company into new areas of
31 technology.
32 Q. I think you mentioned that you had a second

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1 interview in Virginia. Can you tell the jury a
2 little bit about that?
3 A. Yes. Dr. Seligman wanted me to meet the
4 other directors and the senior staff in Richmond
5 because I would be working with them, and I was
6 asked if I would go down there and talk with them.
7 So I went through an interview process with
8 those people. I was not supposed to talk to them
9 about certain things, like the diversification, but
10 mainly focus on technology to make safer cigarettes.
11 Q. When you say you weren't supposed to talk to
12 them about certain things, how did you know that?
13 A. Well, I was told not to talk to them about
14 the fact that I would ultimately be promoted and
15 that the part of my job was to diversify out of the
16 cigarette business.
17 Most of these people that I talked to were
18 only interested in the cigarette business and the
19 technology surrounding cigarettes, and they didn't
20 want them to be involved in the diversification
21 efforts.
22 Q. Well, we will get back to your employment
23 with Philip Morris.
24 Can you tell the jury what you were doing
25 right before getting hired by Philip Morris?
26 A. When the executive search firm came to me, I
27 was vice president of research and development of a
28 company called Pacific Vegetable Oil located near
29 Morristown, New Jersey.
30 Q. What did you learn at Pacific Vegetable Oil
31 that would have been of interest to the people at
32 Philip Morris?

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1 A. Pacific Vegetable Oil made products that were
2 derived from vegetable oils that were used in
3 consumer products as food products, pharmaceutical
4 products, and it was a fundamental type of chemistry
5 or chemicals that are used in many kinds of
6 products.
7 And in doing so, we had relationships with
8 various government regulatory agencies, and we were
9 involved in the mass marketing of large quantities
10 of chemicals.
11 Q. How long were you at Pacific Vegetable Oil?
12 A. I had only been there about a year.
13 Q. What were you doing before you went to work
14 for Pacific Vegetable Oil?
15 A. Before Pacific Vegetable Oil, I was director
16 of scientific research of Lever Brothers Company.
17 At that time, Lever Brothers was headquartered in
18 New York City, and the Research and Development
19 Center where I was a director was in Edgewater, New
20 Jersey.
21 Q. What did you do at Lever Brothers that would
22 have been of interest to people at Philip Morris?
23 A. At Lever Brothers, I had a wide variety of

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24 responsibilities.
25 As director of research, I was responsible
26 for the toxicology division, the microbiology
27 division, the engineering division, both plant and
28 process, analytical chemistry, physical chemistry,
29 organic chemistry, and the patent function. I was
30 the chairman of the patent committee.
31 I was the person that signed off on all of
32 the documents that went to the government regulatory

1 agencies, Consumer Products Safety Commission, EPA.
2 So essentially I was the senior-ranking
3 signatory at Lever Brothers on all of the
4 information that was exchanged between the
5 regulatory agencies and Lever Brothers.
6 Q. What, if any, responsibilities did you have
7 with respect to product testing?
8 A. I was the senior signatory on all product
9 tests, a wide variety of products ranging from over-
10 the-counter drugs like toothpaste and dandruff
11 shampoos and things of that sort, food products,
12 detergent products, a very wide variety of products.
13 Q. And what type of testing did you do?
14 A. We did all kinds of testing from irritation
15 testing, skin irritation, eye irritation.
16 Also if we used any new chemical, we tested
17 it for carcinogenicity to see whether it had a
18 potential to cause cancer, for mutagenicity to see
19 whether it had a potential to cause mutations, or
20 teratogenicity, which is whether or not it would
21 cause birth defects, and for whether any of the
22 long-term irritation effects would result in some
23 lasting condition; that is, something that wouldn't
24 heal. So if you just had an irritation and you
25 removed the chemical and the irritation goes away.
26 Q. Can you give the jury an example of a couple
27 of products they might be familiar with that you
28 were responsible for testing?
29 A. Yes. Closeup Toothpaste, All detergent
30 products, Aim toothpaste, wisK, Imperial Margin,
31 Promise Margin, Mrs. Butterworth's Syrup, and we had
32 a shampoo called Twice as Nice. There is a wide

1 variety of products.
2 Q. I believe you mentioned some safety testing.
3 What, if anything, did you have to do with efficacy
4 testing?
5 A. Well, for products like bar soaps, I didn't
6 mention Dove and Caress, those bar soaps, any
7 deodorant bar soap, any toothpaste for which you are
8 going to say helps prevent tooth decay or any
9 product that is going to prevent dandruff or any of
10 those products, those are drugs.
11 And you have to show that in fact it does
12 what you say it will do, that it is efficacious for
13 the use.
14 In other words, for toothpaste you have to
15 prove it prevents tooth decay. So you have to do
16 clinical trials with dentists and lots of people and
17 prove that the ingredients that you have in there
18 actually do what you say.
19 On the other hand, for other kinds of
20 products, like detergent products, if you make an

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21 advertising claim like maybe for Wisk, you might be
22 familiar with "Ring around the collar," you have to
23 prove that it does what that claim says.
24 So there are two kinds of things we had to
25 do. One is requirement by regulation to prove
26 efficacy, and another was a requirement to prove for
27 claims support if the company wished to market the
28 product by making a specific claim about the
29 product.
30 Q. And did you test actual commercial products?
31 A. Yes. We tested the products exactly as we
32 sold them to consumers, and we also tested

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1 separately each ingredient that went into the
2 product.
3 Q. Are you familiar with the term whole product
4 testing?
5 A. Yes.
6 Q. Could you explain to the jury what that
7 means?
8 A. Well, a product exactly the way you sell it,
9 when you put it all together, is the whole product.
10 Otherwise you are testing ingredients or special
11 formulations that contain parts of the ingredients.
12 But you might have seven ingredients in a
13 product, and so you put them all together exactly
14 the way you are going to sell it, you test that as a
15 whole product. But you also test each of those
16 ingredients separately to make sure that none of
17 them separately causes a problem.
18 Q. What, if anything, did you learn at Lever
19 Brothers about why whole product testing is
20 important?
21 A. Well, we had many instances where if you have
22 seven things which you put into a product and each
23 one of those separately passes whatever tests that
24 you give it for the way you want to use it, you have
25 to worry about what happens when you put them
26 together and whether or not when you put it
27 together, for example, if one of them causes a
28 little bit of irritation and you put the products
29 together, now because you put it together it causes
30 a lot of irritation or some other problem.
31 Q. Can you give the jury some examples of
32 chemicals that are safe, relatively safe by

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1 themselves, but are dangerous when you mix them
2 together?
3 A. Certainly, a couple of examples.
4 One is liquid bleach, for example, is
5 potentially dangerous, but by itself isn't too bad.
6 And vinegar is also used as a cleaning product, and
7 that's not too bad. I mean, we can eat it, so you
8 can clean with it.
9 If you put those two things together, it
10 generates chlorine gas, which can kill you.
11 So there is labels, for example, on bleach
12 products, if you look at it, that says don't use
13 this in addition to other cleaning products.
14 In toothpastes, for example, a lot of them
15 have cinnamon flavor, and sometimes if you put the
16 cinnamon together with certain kind of detergents
17 that are in toothpaste, it can cause irritation on

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18 your gums. We actually had cases where that was the
19 case.
20 So what we had to do was to change the kind
21 of cinnamon we used so that it wouldn't interfere
22 with the detergent or the detergent wouldn't cause
23 it to be more irritating.
24 Q. Thank you.
25 While you were doing these tests at Lever
26 Brothers, what tests were being done by the FDA or
27 the Surgeon General to make sure that these products
28 were safe?
29 A. None.
30 Q. You mean the government doesn't have some lab
31 somewhere where they do all these tests?
32 A. In certain instances the government will give

1 money to do specific tests, but basically the
2 government simply requires you to do the test and
3 you submit the information to the government, it's
4 your responsibility, and the government will make a
5 determination as to whether that's adequate. If
6 not, they ask you to do more.
7 And you keep doing testing until you satisfy
8 them that you have proven that it's effective, if
9 you have to, or that it's safe.
10 Q. In your experience, is that true of all
11 consumer products?
12 A. No, not all consumer products.
13 Q. In your experience, is that true of most
14 consumer products?
15 A. It's true for most consumer products, yes.
16 Q. What, if anything, did you learn at Lever
17 Brothers about the relationship between a company's
18 overall revenue and the research and development
19 budget?
20 MR. WITTMANN:
21 Objection, Your Honor.
22 MR. LONG:
23 Objection, Your Honor. Beyond
24 qualifications.
25 THE COURT:
26 Sustained. Don't answer that
27 question.
28 Next question, please.
29 BY MR. STEPHEN HERMAN:
30 Q. What, if any, responsibilities did you have
31 at Lever Brothers for determining whether and how a
32 product that was developed would be successful in

1 the marketplace?
2 A. I was intermately involved in that in making
3 the determination as to whether or not the products
4 that we tested in test market had met certain
5 economic objectives.
6 Q. Can you give us an example of what type of
7 responsibilities for new product development you
8 would have had in that respect?
9 A. Yes. I mentioned that the engineering people
10 reported to me, so we were concerned with how much
11 it costs to make the product.
12 We knew all of the information about the
13 ingredients that went into it.
14 And we knew what it cost to continue to test

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15 products. Because you don't just test it once, you
16 have to keep testing the ingredients you buy that go
17 into a product to make sure they haven't changed.
18 You keep on testing the product.
19 So I had the basis for all of the costs.
20 The marketing department determined what they
21 could sell it for, what the selling price should
22 be. And so we would get together and determine
23 whether or not it was economically feasible, knowing
24 what it costs to make it and to maintain it on the
25 marketplace with the testing we had to do, whether
26 we could do that profitably or not.
27 Q. Thank you.
28 What, if any, responsibilities did you have
29 at Lever Brothers with respect to marketing and
30 advertising?
31 A. The advertising claims had to be approved by
32 myself. In other words, they would not allow the

1 advertising agencies to make the claims or to even
2 have what they called an advertising campaign
3 without having scientific proof that the statements
4 being made in those claims were true.
5 Q. How long were you at Lever Brothers?
6 A. About eight years.
7 Q. What did you do before you started working
8 for Lever Brothers?
9 A. I was associate professor of chemistry at
10 Virginia State University in Petersburg, Virginia.
11 Q. What, if anything, did you do with the
12 National Institutes of Health at that time?
13 A. At that time, I had a grant from the National
14 Institutes of Health to study air pollution,
15 including things like tobacco smoke, with regard to
16 its effect.
17 Q. Why did you choose to take a teaching
18 position?
19 A. I enjoyed teaching, so I taught for two years
20 at Virginia State. There was an opportunity to have
21 graduate students to do research and to learn more.
22 Q. What did you learn during that process that
23 would have been of interest to the people at
24 Philip Morris?
25 A. Well, I had as part of my Ph.D. work
26 developed an expertise in aerosol science; that is,
27 smokes, things like smokes, and things also like
28 suspensions in water.
29 And this was an opportunity, a second
30 opportunity -- I had other employment before I
31 taught -- that allowed me to use that knowledge to
32 do research on things like smoke.

1 Q. Okay. What did you do before you taught
2 chemistry at Virginia State?
3 A. I worked as a physicist at the White Sands
4 Missile Range in White Sands, New Mexico.
5 Q. What did you learn at the White Sands Missile
6 Range that would have been of interest to the people
7 at Philip Morris?
8 A. Again, we did a lot of research on aerosols,
9 clouds, smoke, stuff that's in the air. The
10 Department of Defense was of course interested in
11 that for a different reason, because it could mess

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12 up radar and mess up visibility and things like
13 that.
14 But we did research, for example, on toxic
15 materials in the air, ozone, and on the smoke as it
16 related to warfare.
17 Q. What did you do before you worked at the
18 White Sands Missile Range?
19 A. I worked on my doctoral degree at Clarkson
20 University, which is in a place called Potsdam
21 New York, northern New York.
22 Q. What is that degree in?
23 A. The degree is in chemistry. Actually it's an
24 area of chemistry called physical chemistry, which
25 is sort of a junction between physics and chemistry
26 where one studies the chemistry of products and how
27 it's related to their physical properties.
28 Q. And I refer to you as Dr. Farone because of a
29 Ph.D. and not because of an M.D; is that right?
30 A. That is correct.
31 Q. Were you working for the defense department
32 at the same time?

1 A. Well, my research work -- actually my
2 doctoral thesis work was paid for by the defense
3 department.
4 Q. Is there anything in particular that you
5 learned in your studies while pursuing your Master's
6 or your doctorate degree that would have been
7 interesting to the people at Philip Morris?
8 A. Yes. I had an extensive background in
9 biochemistry including the chemistry of alkaloids,
10 materials that are in plants like nicotine, cocaine,
11 heroin, mescaline, POD, as well as vitamins,
12 enzymes, a lot of the chemistry that one studies in
13 the field called colloid chemistry, c-o-l-l-o-i-d,
14 which related to things like what happens in your
15 blood or what happens in the air or what happens in
16 water.
17 It's a very applied area of chemistry, and as
18 part of that we had studied combustion, pyrolysis,
19 we had studied things that are important to the
20 burning of tobacco in a cigarette.
21 We also studied the specific chemicals, I did
22 as part of my thesis work and undergraduate work,
23 that are known to be a problem in smoke, chemicals
24 such as the polycyclic aromatic hydrocarbons, a
25 particular kind of chemical that is known to be a
26 cancer-causer.
27 Q. What, if any, other positions did you have
28 before you started working on your Master's?
29 A. During the last two years of my
30 undergraduate, I was employed as an electrical
31 engineer by General Electric Company.
32 Q. What did you do for GE?

1 A. We were involved in the chemistry of semi-
2 conductors, how the chemistry influenced the semi-
3 conductors.
4 Q. Why did you leave Philip Morris?
5 A. I was fired. I was terminated.
6 Q. Can you tell the jury a little bit about the
7 time leading up to that?
8 A. It was in July of '84 that I left. I joined

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9 them in April of 1976, as we talked about before,
10 and in 1983 I was told that I was going to be
11 promoted to vice president. I had been considered
12 for that promotion in 1980, '81.
13 I mentioned I worked for Dr. Seligman. They
14 decided to bring in Dr. Hausermann, who became my
15 boss.
16 MR. WITTMANN:
17 Objection, Your Honor. Not relevant
18 to his qualifications.
19 THE COURT:
20 Overruled. Finish your answer, if
21 you haven't finished it, Doctor. If you
22 have, state that you have, and Mr. Herman
23 will ask you another question.
24 THE WITNESS:
25 Thank you, Your Honor. I haven't
26 finished yet.
27 A. I was mentioning that in 1980, '81, I was
28 discussed promotion, but in 1983 my boss, who at
29 that time was Dr. Hausermann, was ordered by his
30 boss, a fellow named Wally McDowell, Mr. McDowell,
31 to make an announcement that I would succeed him as
32 vice president in about six months.

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1 And during that next six months' period there
2 was many, many management changes and many things
3 that happened, such that in June of 1984 I was told
4 that I would no longer be promoted. I wasn't told
5 why.
6 And in fact, I was advised by my then current
7 boss, Dr. Hausermann, that he couldn't tell me why,
8 he was precluded from telling me why, and that I
9 should retain -- I should go check with a lawyer to
10 see.
11 And at that particular point, what I wanted
12 to do was to negotiate a method for leaving.
13 Because if they didn't want me anymore, that was
14 fine.
15 And because I had told Dr. Hausermann that I
16 was successful in finding the lawyer that he talked
17 about -- he happened to be on vacation at that time,
18 so I wrote him a note.
19 And I was called in to the office of the
20 human resources director, and I was told that I was
21 terminated for insubordination because I had
22 retained an attorney.
23 I tried to explain to that gentleman -- my
24 boss was there. They called Dr. Hausermann back.
25 To make a long story short, we determined
26 subsequent to that termination meeting that we would
27 go back to the research and development and explain
28 to people that I was leaving the company because of
29 irreconcilable differences with the company.
30 We had a large meeting, we told everybody
31 that, and over the next two weeks I negotiated a
32 settlement with Philip Morris. I stayed officially

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1 employed until September of that year, and moved on
2 to create my own company and do the things I'm doing
3 now.
4 Q. How did you feel about being fired?
5 A. I was --

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6 MR. GAY:
7 Objection.
8 THE COURT:
9 Overruled. Answer the question, if
10 you are able to.
11 A. I was upset by the way it was done, but I
12 sort of felt that it was inevitable. That once they
13 said you weren't going to get promoted, that you
14 would be leaving the company one way or another.
15 Q. And what was the result in terms of your
16 family?
17 MR. GAY:
18 Objection, Your Honor.
19 MR. WITTMANN:
20 Objection.
21 THE COURT:
22 Overruled. Answer the question, if
23 you are able to.
24 A. We moved on. We ended up starting a company
25 and I moved to California. The company has been
26 highly successful.
27 As far as my family was concerned, within a
28 week of my termination, I was able to obtain our
29 first permanent client. So they were taken care of.
30 Q. Who was that client?
31 A. Dean Witter Reynolds at that time. Now it's
32 called Morgan Stanley Dean Witter, but at that time

1 it was Dean Witter.
2 Q. And what was the company that you had created
3 at that time?
4 A. The name of the first company that my current
5 company bought out was called Advanced Scientific
6 Applications, and it was a Virginia corporation
7 because I lived in Virginia. That's where I started
8 it.
9 And it was involved in environmental
10 technology; that is, reducing toxic chemicals in the
11 environment and finding replacements for those
12 chemicals, which my current company is involved in.
13 Along with that comes the idea of alternative
14 energy, making electricity by not burning fossil
15 fuels, things of that sort.
16 So Dean Witter, it turned out, had many, many
17 projects that it had underwritten, as the
18 underwriter sold shares in, for all kinds of
19 projects in these areas, and they hired me as their
20 consultant to evaluate, study and help out some of
21 those projects which were in economic difficulty.
22 Q. We will go into this more extensively later,
23 but just for the purpose of laying your
24 qualifications, could you explain to the jury
25 briefly what, if any, experience you had at
26 Philip Morris with respect to the growing of
27 tobacco?
28 A. We actually did research on different ways of
29 growing it and different kinds of tobacco, and how
30 you could modify tobacco.
31 Q. Did you personally observe tobacco in its
32 natural state?

1 A. Yes. Went to the farms, talked with the
2 farmers, gave presentations to farmers actually on

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3 behalf of Philip Morris.
4 Q. What, if any, experience did you have with
5 respect to the curing of tobacco?
6 A. We actually developed alternate curing
7 methods, and we studied them to the point of curing
8 tobaccos in different manner and putting them in
9 cigarettes that were tested and obtaining patents on
10 different technology for curing tobacco.
11 Q. What, if any, experience did you have with
12 respect to the manufacturing process?
13 A. I visited all of the plants -- not all of
14 them, but each of -- one each of each different kind
15 of plant, where the different components for
16 cigarettes are either -- tobacco is either treated
17 or it's processed or the cigarettes are actually
18 made or where certain kinds of materials that are
19 made from tobacco, like expanded tobacco,
20 reconstituted tobacco, where all of those things
21 were made.
22 We did research on those processes, and we
23 developed a computer-based system for determining
24 how a cigarette would deliver smoke, tar, nicotine
25 and various chemicals, as a function of all of the
26 things you can do in making a cigarette. The kinds
27 of paper, the length, all of these kinds of
28 parameters.
29 So we developed a basic background in
30 cigarette technology that the company could use to
31 change its products.
32 Q. What, if anything, did you have to do with

1 the research of the chemistry of cigarette smoke?
2 A. A lot, because my personal background, as I
3 mentioned, had to do with smokes before, which
4 includes how things burn, why they burn, what is
5 created when they burn.
6 And we were studying how to change what is
7 made in the burning process of the cigarette, and
8 how to create a situation where the things that you
9 would rather not have there, toxic chemicals, are
10 reduced.
11 Q. What, if any, experience did you have with
12 respect to marketing and advertising in the
13 cigarette company?
14 A. I took part in meetings that -- well, there
15 is two parts to that.
16 Initially every month Philip Morris had a
17 meeting with the senior executives from New York,
18 they called it a Richmond meeting, where the issue
19 of the market, what was happening in the market, and
20 our strategies and products for the future were
21 discussed.
22 But in addition to that, toward the end of my
23 career there, the subjective evaluation facility
24 reported to me. And that's the facility where we
25 did the consumer testing of products to see whether
26 they were acceptable to consumers or not.
27 Q. I think you might have covered this a little
28 bit. What, if anything, did you have to do with the
29 development of cigarette technology?
30 A. As I say, we worked very closely with the
31 engineers, and we were responsible for the basic
32 physics and chemistry of that technology.

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In other words, for example, how a change that you make in a cigarette, its length, the holes and so on, where you put them in the filter, how that changes the chemistry of the burning process, what happens to the smoke.

Q. Thank you.

Since your time with the tobacco industry, do you continue to look at safety in our products?

A. Yes.

Q. And you still do that today?

A. Yes, I do.

Q. What's the name of your company now?

A. Applied Power Concepts, Incorporated.

Q. And can you tell the jury and Your Honor a little bit about that company and what it does?

A. Yes. We essentially try to eliminate toxic chemicals, carcinogens, mutagens, bad chemicals from the environment, and we try to replace those toxic chemicals where they have to be used for whatever reason by ones that are known to be safer.

We have developed a wide range of technologies that are used for those purposes.

Q. Are you still involved in developing products?

A. Yes.

Q. Can you tell the jury a little bit about that?

A. Yes. We develop all kinds of products.

For example, we have developed an insecticide that is made from -- it's chemically made from sugar and vegetable oil. And this will kill insects, but it's safe enough for humans to eat, and it has been

approved by the Environmental Protection Agency to be safely applied on fruits and vegetables for killing insects, and it replaces chemicals that are much more toxic.

We have developed technology that allows one to clean up a spill of carcinogenic material like you find in cigarette smoke, the benzene, toluene, that kind of thing, from gasoline spills without having to dig it up and haul it away. You can do it in place. And that's been used at over eight thousand sites in the United States.

So those are products that are used for various call it remediation purposes.

Q. And in connection with the development of those products, to what extent, if any, are you involved in the testing of those products for safety?

A. They all have to be tested for their safety. They all have to be discussed with the government with regard to whether or not we can even make them.

Today you can't make a new chemical of any type without having a discussion with the Environmental Protection Agency and proving to them that the application of this chemical for the purposes that you intend it won't hurt the environment or it won't hurt people to use it.

Q. In connection with the development of those products, to what extent, if at all, are you

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30 involved in determining the commercial feasibility
31 of those products?
32 A. We are intimately involved in that. Our

1 clients hire us to do that.
2 And whether or not you can make these
3 chemicals for a reasonable price so that you can
4 sell them and make money is obviously a very, very
5 important thing. Nobody is going to make something
6 that they are going to lose money on when they sell
7 it.
8 So we have to right from the beginning
9 understand what the value of what you are doing is.
10 For example, on the insecticide I mentioned, if you
11 are going to sell that for X dollars per pound, then
12 you have to be able to make it for something less
13 than that.
14 So this is an integral part of all the
15 technology we develop.
16 Q. Dr. Farone, have you published any peer-
17 reviewed articles or essays?
18 A. Yes, I have.
19 Q. About how many?
20 A. Well, it's probably -- in peer reviewed, it's
21 probably forty or fifty, and then there is about
22 twenty to twenty-five patents, which are also of
23 course peer reviewed by the patent examiners for the
24 government.
25 Q. Have you published any articles or essays
26 specifically regarding cigarettes or cigarette
27 technology?
28 A. Yes. I think there is about four.
29 Q. Are you a member of any professional
30 societies or associations?
31 A. Yes, I am.
32 Q. Could you give the jury an example of a few

1 of those?
2 A. Member of the American Chemical Society, the
3 American Institute of Chemical Engineering, and the
4 American Institute of Physics, and several others.
5 Q. Just a couple more examples?
6 A. The American Association for the Advancement
7 of Science, the Optical Society of America, Sigma
8 Xi, which is a national honorary research
9 fraternity. And there are probably a few more.
10 Q. Thank you.
11 Have you ever served as a consultant to the
12 government on cigarette technology, cigarette smoke?
13 A. Yes, I have.
14 Q. How did that come about?
15 A. I was contacted by the government at the end
16 of 1993, and then have served different governmental
17 agencies in different capacities since then.
18 Q. Well, what was the government interested in
19 in 1993?
20 A. Interested in basically how cigarettes were
21 made, how smoke functioned, how -- the relationship
22 of delivering nicotine to tar and exactly how
23 cigarettes worked.
24 And most of the work that I do for various
25 agencies of the government revolves around the same
26 issue; that is, what modifications -- if you make a

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27 modification to a cigarette, how does it change the
28 chemistry of the smoke.
29 Q. Has the government asked you to testify in
30 any cases or other proceedings?
31 A. Yes, they have.
32 Q. In addition to that work, have you acted as a

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1 consultant to other governmental agencies in the
2 areas of tobacco use or cigarette design?
3 A. Yes, I have. The Commonwealth of
4 Massachusetts, the Center for Disease Control, and I
5 frequently give invited lectures to tobacco control
6 groups from various states that have meetings
7 periodically and invite me to come and talk.
8 Q. What -- oh, I'm sorry.
9 A. I'm also on the scientific advisory board of
10 universities dealing with tobacco and smoke,
11 cigarette issues.
12 Q. And in your work with the Centers for Disease
13 Control, did that relate to the National Cancer
14 Institute or is that something else?
15 A. That's something else.
16 The National Cancer Institute contacted me to
17 be a peer reviewer, to review a book called
18 Monograph 13, which people here may have heard
19 about, which has to do with changes in cigarettes
20 over the last twenty years and what effect that has
21 had on making them safer.
22 Q. Do you recall when it was that you reviewed
23 Monograph 13?
24 A. It was the end of the year. I think it was
25 about 2000, toward the end of that year.
26 Q. Have you ever appeared on Sixty Minutes as an
27 expert or a consultant on the tobacco industry?
28 A. Yes, I have.
29 Q. How did that come about?
30 A. I was called by them and asked if I would
31 provide some information, so I did.
32 Q. And you also appeared on a documentary

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1 produced by the BBC?
2 A. That is correct.
3 Q. From the time that you were fired by
4 Philip Morris in 1984 until the time that the
5 government contacted you at the end of 1993, during
6 that entire ten-year period, did you ever sue
7 Philip Morris?
8 A. No, I did not.
9 Q. Did you ever compel arbitration against
10 Philip Morris?
11 A. No.
12 Q. Did you ever bring an administrative claim
13 against Philip Morris?
14 A. No.
15 Q. Did you ever testify in lawsuits against
16 Philip Morris?
17 A. No.
18 Q. Did you ever go to a plaintiffs lawyer's
19 office volunteering to testify against
20 Philip Morris?
21 A. No.
22 Q. Did you ever go talk to a governmental agency
23 about blowing the whistle on Philip Morris?

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24 A. No.
25 Q. As an expert witness in this case, you won't
26 only be speaking about Philip Morris and what they
27 knew and the choices it made, but also about the
28 other defendants, RJR, Lorillard and Brown &
29 Williamson. Are you prepared to do that?
30 A. Yes, I am.
31 Q. And you will be testifying about the time
32 before and after you were in the tobacco industry as

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1 well as the knowledge that you obtained while
2 employed by Philip Morris. Are you prepared to do
3 that?
4 A. Yes, I am.
5 Q. When you worked at Philip Morris, were you
6 privy to documents and information about what was
7 known and the choices that they made before you got
8 there?
9 A. Yes, I was.
10 Q. Can you tell the jury and the Court a little
11 bit about that?
12 A. During my first year, before I was promoted
13 to director, the main mission that I had was to
14 figure out what new things we could do with regard
15 to making cigarettes safer, or if old things had
16 been done that could be done better.
17 And in order to prepare for that, I was
18 allowed access to all of the previous scientific
19 work that had been done and files of certain people
20 like, for example, Dr. Wakeham, who had been
21 instrumental in -- he was the vice president of
22 research and development from about 1960 to 1976.
23 So he had a big file of documents.
24 Then there was a library that had a lot of
25 documents in it. And then I would go around and
26 interview all of the people whose names appeared on
27 the reports to discuss what they had done and why
28 they had done it.
29 So in that first year, I did an extensive
30 discussion with people, plus literature reading of
31 all of the back things that Philip Morris had done.
32 Q. Did you talk to Dr. Wakeham?

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1 A. Yes.
2 Q. Could you give a few other examples of people
3 you talked to about the research they had done
4 before you got there?
5 A. Yes. I talked -- at that point there was
6 about four hundred people in the Research &
7 Development Department. I think I probably talked
8 to half of them.
9 But the key people were the directors at that
10 time. It was Dr. Thomas Osdene, Dr. Walter F.
11 Gannon, Mr. Richard Thompson, and then I became the
12 fourth director.
13 Later there was another director, Mr. Leo
14 Meyer, who worked for Dr. Gannon when I got there.
15 I talked to all of the divisional managers.
16 Each director had three or four divisional managers
17 in various fields, and I talked to them.
18 And below the divisional managers are project
19 leaders. Those are people who lead a team of three
20 or four scientists or engineers, and I interviewed

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21 those.
22 Philip Morris had a procedure where every
23 Friday one of the projects would report on what they
24 did for the last year, and I would go to those
25 meetings and then discuss it with them.
26 I actively actually participated in some of
27 the projects, helping them do analysis of their
28 chemicals, of their data.
29 I think Dr. William Dunn I talked with,
30 Dr. Eichorn, all of the staff people that worked for
31 the vice president.
32 Q. During your tenure at Philip Morris, were you

1 also privy to some of the information that was known
2 to the other tobacco companies and some of the
3 choices that they made?
4 A. Yes, in two ways.
5 One is that some of the stuff that has been
6 done over the years is published.
7 There is a thing called a Tobacco Chemist
8 Research Conference that occurred every year where
9 people working on cigarette and tobacco issues gave
10 papers. I reviewed those.
11 But also Philip Morris studied the products
12 of our competitors. We actually purchased and
13 analyzed R. J. Reynolds' products, Lorillard
14 products, et cetera.
15 Q. Did you study patents at that time?
16 A. Yes, actually right from the beginning or
17 even before I went there.
18 Patents are a very important way to study
19 what technologies have been done historically over a
20 period of time, because they build on each other.
21 You can't get a patent if it's the same as something
22 that happened before.
23 So as patents come along, that's an
24 improvement in what we call the state of the art.
25 So patent technology is very important to
26 establishing what is known in any field.
27 Q. Since leaving Philip Morris, have you
28 continued to study some of the patents issued to the
29 cigarette industry?
30 A. I have, yes.
31 Q. Why did you do that?
32 A. A lot of the technology is applicable in

1 other fields.
2 For example, Philip Morris had a patent
3 granted in 1974 that I was aware of, I did some work
4 on it, to reduce carbon monoxide in smoke. And
5 that's part of -- the patent was granted in '74.
6 That means in the early 1990s the patent runs out
7 and anybody can use that.
8 And we looked at that and other patents in
9 that same area because we developed a way of using
10 that to reduce carbon monoxide from turbines, gas
11 turbines burning natural gas.
12 Q. Thank you.
13 Now, from 1984 when you got fired by
14 Philip Morris to 1993 when the government contacted
15 you, you were not privy to any internal company
16 documents; is that right?
17 A. That is correct.

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18 Q. Have you since the government contacted you
19 in 1993 been able to review industry documents that
20 have been made available through litigation or by
21 subpoena?
22 A. Yes.
23 Q. And have you also had a chance to review
24 since 1999 when the defendants started putting
25 documents on their web sites documents that have
26 been put on the web sites?
27 A. Yes, I have.
28 Q. Okay. And could you give an approximation of
29 how many industry internal documents you have been
30 able to review to date?
31 A. Well, it's thousands. I think at one point I
32 had something like fifty of those boxes that are

1 over there against the wall filled with documents
2 that various people had sent me, not all attorneys.
3 Government agencies, people who want -- the BBC, you
4 know, people who wanted some help with understanding
5 what they meant and how the technology works.
6 Q. Are you still in the process of reviewing
7 documents?
8 A. Yes, I am.
9 Q. And the documents that we are talking about
10 aren't just Philip Morris documents; right?
11 A. That is correct.
12 Q. They relate to Lorillard and Brown &
13 Williamson and RJR?
14 A. Yes. All of the tobacco -- cigarette
15 companies in the United States as well as documents
16 relating to tobacco technology beyond making
17 cigarettes, growing it and treating it and things of
18 that type.
19 MR. STEPHEN HERMAN:
20 Your Honor, plaintiffs tender
21 Dr. Farone as an expert in chemistry and
22 applied chemistry, including the chemistry
23 of tobacco, the chemistry of cigarette
24 smoke, and the chemistry of nicotine --
25 I can't pronounce it. Maybe you can
26 help me. What's the word I'm looking for?
27 THE WITNESS:
28 Nicotinic.
29 MR. STEPHEN HERMAN:
30 -- nicotinic alkaloids, and in
31 product research and development with a
32 specialty, cigarette research, testing,

1 safety and design technology.
2 And we will also ask Dr. Farone to
3 testify as a fact witness based on his
4 personal knowledge and experience in a
5 review of industry documents.
6 THE COURT:
7 Objection to the tender and cross on
8 qualifications?
9 MR. GAY:
10 Yes, Your Honor. Just some cross at
11 this point.
12 THE COURT:
13 We will take our midmorning recess at
14 this point. We will recess until ten

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15 minutes to eleven by the wall clock.
16 (In open court without a jury
17 present:)
18 THE COURT:
19 You can step down.
20 THE WITNESS:
21 Thank you.
22 THE COURT:
23 Anything for the record by plaintiffs
24 counsel as a result of the morning's
25 proceedings?
26 MR. STEPHEN HERMAN:
27 No, Your Honor.
28 THE COURT:
29 Defendants?
30 MR. WITTMANN:
31 No, Your Honor.
32 (A recess is taken at 10:36 a.m.)

1 (In open court with a jury present at
2 10:56 a.m.:)
3 THE COURT:
4 Please be seated.
5 Cross on qualifications?
6 MR. GAY:
7 Yes, Your Honor. Thank you.
8 Good morning, members of the jury.
9 -- -- --
10 VOIR DIRE EXAMINATION
11 BY MR. GAY:
12 Q. Good morning, Dr. Farone. I'm Charlie Gay, I
13 introduced myself to you earlier this morning in the
14 back of the courtroom.
15 We have not met before; correct?
16 A. That's correct.
17 Q. I represent Philip Morris, and I want to ask
18 you a few questions about that.
19 You were asked some questions about your
20 early involvement with Philip Morris and employment
21 with Philip Morris. Do you remember those
22 questions?
23 A. Yes, I do.
24 Q. And one of the things Philip Morris did was
25 ask you to just go back and look at everything that
26 had been going on; right?
27 A. That's correct.
28 Q. And one of the things you were looking at was
29 all of the efforts Philip Morris had made over the
30 years to reduce the risks of cigarettes; right?
31 A. The technology that was developed, yes.
32 Q. And that was one of the reasons they were

1 hiring you, to help them reduce the risk of
2 cigarettes?
3 A. That's correct.
4 Q. And you looked at their facilities. They
5 opened those up to you?
6 A. That's correct.
7 Q. You looked at their records. They opened
8 those up to you?
9 A. That's correct.
10 Q. And they did that from the very beginning;
11 right?

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12 A. Well, not all the records, but basically, all
13 the technology things, yes.
14 Q. In other words, Dr. Farone, when they hired
15 you, they just knew about your background and two
16 interviews; right?
17 A. Well, I think so. I mean, I don't know
18 exactly what they did know.
19 I had two interviews and they knew about my
20 background, yes.
21 Q. I thought that's what you told us this
22 morning. You had two interviews with them and they
23 knew about your background, and they wanted you to
24 help them make a safer cigarette?
25 A. That is correct.
26 Q. And then they opened up their files to you?
27 A. Pretty much, as far as I know, yes.
28 Q. So once you did that, you decided you wanted
29 to try to also help them make a safer cigarette;
30 right?
31 A. Well, actually I decided to work there before
32 they let me see any of the back files.

1 Q. That's fair enough. So when you did see the
2 files and you did see their facilities and you did
3 see all the efforts they were making for a safer
4 cigarette, you decided that you wanted to continue
5 working there; right?
6 A. That is correct.
7 Q. All right. Now, you mentioned when
8 Mr. Herman was talking to you that you worked
9 closely with the engineers at Philip Morris. Did I
10 hear that correctly?
11 A. Yes.
12 There were two directorates. Initially when
13 I went, Dr. Gannon was the director of both product
14 and process development, and we worked very closely
15 together, Dr. Gannon and I.
16 Later that function was split into two
17 directorates, one was the process development, which
18 Dr. Gannon remained the head of, and the other was
19 the product development directorate.
20 So there were two different people, and I
21 worked very closely with them, that's true.
22 Q. With both of those?
23 A. That is correct.
24 Q. So there was product development, which was
25 the engineers?
26 A. No. Product development were people actually
27 developing products to the specifications of
28 marketing after those products had been discussed at
29 these Richmond meetings.
30 Q. I see.
31 A. Process development has to do with the
32 technology to modify what you can do to make those

1 cigarettes.
2 Q. Those are the engineers?
3 A. Yes.
4 Q. So the process directorate is the engineers,
5 and those are the ones that actually construct the
6 cigarette? Do I understand that correctly?
7 A. Well, not quite.
8 I mean, the design of a commercial cigarette

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9 is a team -- is a team effort. There is a
10 specification that concerns marketing. The
11 engineers working on processes that had previously
12 been developed say this technology would be
13 available, and the development people actually take
14 the different prototypes, put them in the consumer
15 testing, the development people interface with
16 marketing, and our position was to support both of
17 those groups with any modifications to the
18 technology that might make it easier, less
19 expensive, better, whatever, to make cigarettes.
20 Q. I see. But what I'm trying to understand is
21 engineers served a different function than you in
22 connection with making cigarettes or altering the
23 construction of cigarettes; right?
24 A. That is correct. They were more involved in
25 designing the facilities that would be used to make
26 the cigarettes after we had determined what
27 technologies might be applicable.
28 Q. So the key point to them is whether they
29 could design the facility that could actually
30 construct the cigarette in such a way that they
31 wanted to do that; right?
32 A. Yes, I can agree with that.

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1 Q. All right. Now, so what we are talking about
2 is your involvement was to analyze, as I understand
3 it, the chemistry of the cigarette smoke with
4 respect to these design changes?
5 A. No, no. We actually suggested the physical
6 part of it too.
7 In other words, we did extensive work in
8 developing new methods for perforating or
9 ventilating cigarettes.
10 Q. Right.
11 A. That without the work that we did in that
12 area, certain cigarettes would have been impossible
13 to manufacture en masse.
14 Q. I was going to ask you about that.
15 One of the things that you actually took a
16 great interest in at Philip Morris was the vent
17 holes in the cigarette filter?
18 A. That is correct.
19 Q. You were very involved in that.
20 But the point I'm trying to understand is --
21 maybe you can help me -- is that the engineers would
22 have to construct the facility or design the
23 facility in order to assist with implementing the
24 vent holes; right?
25 A. Well, actually in that particular case, it
26 was a joint project between my directorate and the
27 engineering department.
28 And I mean, the engineering department of the
29 corporation, not of the one that was in R&D.
30 Q. Okay.
31 A. And I --
32 Q. Go ahead if you weren't finished.

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1 A. So in fact we were intimately involved in
2 constructing it.
3 We developed the training programs for the
4 people who actually had to run the lasers, because
5 lasers were not something that most engineers had

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6 much experience with at that time. So we actually
7 had people on site during the construction phase,
8 during their education.
9 But the engineers actually hired the
10 contractors to come in and build the facility, if
11 that's what you are --
12 Q. That's kind of what I'm trying to
13 understand.
14 The engineer's role is to construct the
15 facilities so that the actual design of the product
16 can be made?
17 A. That is correct.
18 Q. Okay. So in terms of -- you talked about
19 patents a little bit. Let me see if we can shortcut
20 this.
21 You talked about patents; right?
22 A. Right.
23 Q. That you have looked at and you have some
24 experience with patents?
25 A. Yes, I do, extensively.
26 Q. Now, am I correct that you have never
27 personally obtained a patent that relates to
28 cigarette design?
29 A. That is correct. The people working for me
30 were -- there are certain things about being an
31 inventor, conception and reduction to practice, and
32 the people that worked for me were the ones that

1 obtained the patents.
2 Q. And you never personally obtained any patents
3 that relate to cigarette construction?
4 A. That is correct.
5 Q. Okay. Now, since you left Philip Morris in
6 1984, Dr. Farone, you have never designed a
7 cigarette that has been tested or marketed; right?
8 A. You mean commercially tested or marketed?
9 Q. Yes.
10 A. No, that's correct. I have suggested many
11 designs, but I have not actually marketed one.
12 Q. You don't have any set of specifications of
13 any specific cigarette design of yours, do you?
14 A. Well, I have suggested some. I mean, I don't
15 know what you mean by that, I guess.
16 Q. Well, the actual specifications of how it
17 would be constructed and made, what facilities would
18 be used and things like that? Do you understand
19 what I'm saying?
20 A. I think I do, but I'm trying to make sure I
21 answer correctly.
22 Most of the suggestions that I have made with
23 regard to safer cigarette designs are based on
24 existing facilities. In other words, you don't need
25 a special facility to do it.
26 But I have never myself manufactured and sold
27 a cigarette, if that's what you are asking.
28 Q. That's what I'm asking. You do not have a
29 set of specifications for any suggested alternative
30 design; right?
31 A. Well, without getting into some of them, I
32 think I do. I mean, I think I have suggested

1 specifically that, for example, one could take the
2 Cambridge cigarette that was sold in 1980 and to add

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3 nicotine to the filter of that cigarette as an
4 alternative design for a safer cigarette.
5 Q. So what you are saying is that you would
6 suggest that Philip Morris add nicotine to a
7 filter --
8 A. That is correct.
9 Q. -- of a cigarette?
10 A. That is correct.
11 Q. My question really is do you have
12 specifications of how they would do that other than
13 just a suggestion?
14 A. Yes.
15 Q. Have you presented them anywhere?
16 A. Well, in my documentation -- I mean, it is
17 known how to add flavors to filters. The parameters
18 for the Cambridge filter are well known.
19 In 1981 I made specific suggestions for the
20 filler.
21 All of my suggestions were based on taking
22 existing designs and making a modification so you
23 could use -- if you are talking about, to me a
24 specification is the length, the diameter, the size
25 of the filter, the hole placement.
26 So those specifications for the alternative
27 designs that I have in mind, most of them, are well
28 known.
29 Q. So these are ideas and concepts of yours that
30 you are talking about, right, that you have raised?
31 A. Well, not only mine. They are ideas and
32 concepts that have been raised throughout the

1 industry by people at Philip Morris, R. J. Reynolds,
2 B&W.
3 What I have done is to review all of those
4 concepts that have been raised over the decades that
5 in my opinion would lead to safer cigarettes.
6 So I don't want to take credit for these
7 ideas. They are not mine.
8 Q. All right. Now, before you offer an
9 alternative design cigarette to the public,
10 Dr. Farone, would you want to run certain tests on
11 it?
12 A. Well, yes.
13 Q. You would want to run biological tests?
14 A. Well, most of the alternatives that I have in
15 mind, the biological tests for the technology have
16 been run. But, yes.
17 Q. Okay, the answer is yes.
18 And you would want to run toxicological
19 tests?
20 A. Well, those are kind of the same thing. But,
21 yes.
22 Q. And I think you indicated that you have never
23 done such tests on your proposed designs; right?
24 A. I never personally have done it.
25 The tests on some of the things that I
26 propose have been done by the cigarette companies.
27 Q. Let's talk about tests a little bit for a
28 moment, Dr. Farone.
29 The type of tests -- one of the types of
30 tests we have just been talking about is an
31 inhalation study; right?
32 A. Well, inhalation studies are a type of

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biological safety test, that's correct.
Q. Mouse skin painting we have heard a bunch about in this trial. That's one of the type of biological tests?
A. That is correct.
Q. In vitro mutagenicity tests?
A. Yes. Those are laboratory tests using microbes.
Q. Now, you have never conducted a mouse skin painting test; right?
A. Personally I have not. I was in charge of toxicology at Lever where we did all kinds of safety testing, carcinogenicity.
But I myself have never painted tar on the back or belly of a mouse.
Q. And you have never conducted an inhalation test?
A. On cigarettes. I have done it on hairsprays. At Lever, that was part of my function.
Q. You have never done it on cigarettes?
A. That's correct.
Q. And you have never supervised such a test with cigarettes?
A. Now we are talking about inhalation?
Q. Yes.
A. No, I never supervised an inhalation test on a cigarette, that's correct.
Q. And as we sit here today, there is no consensus in the scientific community as to which bioassay tests that we are talking about is the best?
A. I can agree with that.

Q. Okay. In other words, no federal or state government has established a battery of tests they recommend the companies use to assess the biological activity of cigarette smoke?
A. That is correct. That work is in progress right now. I'm participating in study groups that are talking about that. That has not been done yet.
Q. Okay. And no public health authority or organization has ever endorsed any tests as a means of determining scientifically whether one brand of cigarettes is safer than another; right?
A. Not quite right.
The Institute of Medicine has laid down some parameters that are currently being -- as far as I understand, have been accepted, particularly by your client, Philip Morris, as being something that should be followed in such testing.
Q. That's something very recent?
A. Yes, within the last four years, three or four years.
Q. Okay. You have never authored any peer-reviewed articles on mutagenicity tests of tobacco smoke; right?
A. That is correct.
Q. You have authored no peer-reviewed publications on what's called cytotoxicity of cigarette smoke?
A. That is correct.
Q. What is cytotoxicity?

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30 A. Just toxicity to cells.
31 And the cells can take various forms. They
32 can be plant cells or bacterial cells or lung cells

1 or tissue from the mouth, mucosal cells. Different
2 kinds of cells.
3 And a cytotoxicity test is one where you
4 expose those cells to different levels of a chemical
5 to determine whether or not those cells change
6 because of the chemical that you have applied or a
7 mixture of chemicals.
8 Q. Okay. And mutagenicity deals with the same
9 type of in vitro tests to look at whether or not you
10 put -- do a bacteria assay like salmonella, as to
11 whether the cell changes; right?
12 A. Yes. The mutagenicity, you assess whether
13 the cell genetics have changed, whether they
14 mutate.
15 Cytotoxicity, you assess whether it kills the
16 cell, whether it's toxic to the cell.
17 Q. And again, you have never done any of those,
18 right, in terms of peer-reviewed articles?
19 A. No. I have only supervised the ones that
20 were done at Lever Brothers and participated at the
21 ones at Philip Morris. I did not author any peer-
22 reviewed articles.
23 Q. Now, Dr. Farone, you were asked about
24 testimony you gave in tobacco cases?
25 A. Yes, I was.
26 Q. And you have given quite a number of them;
27 right?
28 A. Yes.
29 Q. All against the tobacco industry; right?
30 A. All except one, yes.
31 Q. All right. And this is the third trial you
32 have testified in in just this very year?

1 A. That's probably correct. You probably
2 have -- you keep track of it better than I do. I
3 think that's correct. The third or the fourth.
4 Q. And in the last six months, you have
5 testified in the Allen case in Florida?
6 A. That's correct.
7 Q. You have testified in the Miles case in
8 Illinois?
9 A. That's correct.
10 Q. You testified in the Conley case in
11 California?
12 A. That's correct.
13 Q. You testified in the Lucier case in
14 California?
15 A. That's correct.
16 Q. And you testified in the Bulloch case in
17 California?
18 A. Right.
19 Q. And you are testifying in this case now;
20 right?
21 A. Right. So that's six, yes.
22 Q. All against the tobacco industry?
23 A. Those six are, yes.
24 Q. In addition to testifying against the tobacco
25 companies, you also -- you talked about lectures you
26 give; right?

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27 A. That's correct.
28 Q. You educate and lecture to lawyers about
29 cigarettes, don't you?
30 A. The lectures I was talking about aren't
31 attorneys. Those are basically medical -- people
32 charged with the responsibility of reducing

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1 mortality and morbidity due to smoking.
2 They are basically state agencies. They are
3 not -- some of them may be associated with the
4 attorney generals of those states, but they are
5 basically doctors.
6 Q. Okay. Well, put that aside for a moment.
7 Don't you sort of put on a cigarette school for
8 lawyers?
9 A. When I am retained by an attorney, I will
10 explain the general technology of cigarettes to
11 them. So, yes.
12 Q. You have a class sort of that you call
13 Tobacco 101?
14 A. That's introductory tobacco technology, very
15 similar to what I did for the attorneys when I
16 worked at Philip Morris, actually.
17 Q. And you offer a sophomore class to lawyers
18 who bring these cases against cigarette companies
19 too, don't you, like a 201 or something like that?
20 A. That was a characterization made sort of by
21 defense attorneys, but basically, yes, the amount of
22 information that you teach to somebody depends on
23 their level of skill, you know, whether they already
24 know something about it or not. And a lot of
25 attorneys know very little about it and some
26 attorneys know quite a bit.
27 And that was also true when I was at
28 Philip Morris. I would educate new attorneys,
29 especially about patent issues and things of that
30 type.
31 So, yes, that's the function is to educate.
32 Q. And your function in educating these

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1 attorneys is to assist them in bringing these types
2 of cases against the companies; right?
3 A. For plaintiffs attorneys, that is correct.
4 For the state tobacco control people, they
5 are not interested in litigating. They are
6 interested in controlling smoking.
7 Q. They are interested in regulating; right?
8 A. Well, most of them don't -- most states do
9 not have regulations.
10 They are interested in educational programs
11 and things they can do to reduce death due to
12 smoking. They are interested in maybe advertising
13 campaigns or things of that type.
14 Q. But my point is that you have these attorneys
15 that bring these cases against the cigarette
16 companies, and you go over not only the things they
17 need to know about these cases; right?
18 A. Yes. If I'm hired to do that, I do that,
19 yes.
20 Q. And then you also go over -- you discuss the
21 company documents with them as well; right?
22 A. That is correct.
23 Q. And you are paid for doing that as well;

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24 correct?
25 A. That is correct.
26 Q. Now, the documents that you said that you had
27 reviewed, you said you reviewed thousands of
28 documents; right?
29 A. That is correct.
30 Q. Is it fair to say that's a very small
31 percentage of the documents that are available?
32 A. That's also probably correct.

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1 Q. In fact, there are millions of these
2 documents available; right?
3 A. Well, there are certainly millions of pages.
4 As far as individual different documents, probably
5 it's still in the million, million and a half range.
6 Q. And you only have looked at a small
7 percentage of them; right?
8 A. That's probably correct, yes.
9 MR. GAY:
10 Thank you, Dr. Farone.
11 THE COURT:
12 Redirect on qualifications?
13 MR. STEPHEN HERMAN:
14 No, Your Honor.
15 THE COURT:
16 Objection?
17 Well, I need to find out if any other
18 defendants wish to cross on
19 qualifications. Let me do that now.
20 Any other defendants wish to cross on
21 qualifications?
22 MR. WITTMANN:
23 No, Your Honor.
24 MR. SCHNEIDER:
25 No, Your Honor.
26 THE COURT:
27 All right. Redirect on
28 qualifications?
29 MR. STEPHEN HERMAN:
30 No, Your Honor.
31 THE COURT:
32 Objection?

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1 MR. GAY:
2 There is one objection, Your Honor.
3 THE COURT:
4 Approach the bench.
5 (At sidebar:)
6 MR. GAY:
7 Yes, Judge, the only objection to the
8 tender as tendered is the safer cigarette
9 design issue.
10 I don't think he's got qualifications
11 sufficient to qualify him as somebody who
12 has in fact designed a cigarette that's an
13 alternative or that is feasible, and he
14 just doesn't have the qualifications for
15 that.
16 MR. SCHNEIDER:
17 We join in that objection, of
18 course.
19 But further on behalf of the
20 defendants, including B&W, who never

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21 employed this gentleman, we don't believe
22 he can serve as a fact witness. He
23 doesn't have personal knowledge that would
24 enable him to testify as a fact witness.
25 THE COURT:
26 This is not qualifications on fact
27 testimony. This is on expert testimony.
28 MR. WITTMANN:
29 He's tendered as a fact witness,
30 though, in his qualifications.
31 THE COURT:
32 A fact witness doesn't require a

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1 tender, and I don't rule on it. I rule on
2 questions as and when they are asked and
3 objected to.
4 MR. WITTMANN:
5 I just wanted to make sure it's not
6 waived.
7 THE COURT:
8 It's not waived.
9 MR. STEPHEN HERMAN:
10 I believe that what I said --
11 THE COURT:
12 Just a minute.
13 So your objection, Mr. Gay, is to the
14 tender of this person with a specialty in
15 cigarette research, testing, safety and
16 design technology till the end.
17 MR. GAY:
18 Just mainly design technology, Judge,
19 is the primary basis of my argument. I
20 asked him if he ever designed anything.
21 All he is done is make suggestions
22 about designs. He's never marketed
23 anything.
24 THE COURT:
25 Yeah, okay.
26 MR. GAY:
27 That's my objection.
28 And we have to be able to say it's a
29 feasible alternative design that could be
30 made and constructed. He doesn't really
31 deal with the construction aspect of it.
32 And also the commercial --

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1 THE COURT:
2 I have heard enough of that.
3 I need to keep these jurors until a
4 little after noon. I'm looking for
5 suggestions how to do that.
6 MR. STEPHEN HERMAN:
7 I think we are prepared to read some
8 documents.
9 THE COURT:
10 Now?
11 MR. STEPHEN HERMAN:
12 I believe so.
13 THE COURT:
14 Okay. I'm going to take the tender
15 and the objections under advisement.
16 We will read documents until about
17 ten after twelve, and then we will take

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18 our lunch recess, and then talk about the
19 exhibits and the demonstratives after
20 lunch; okay?
21 MR. STEPHEN HERMAN:
22 Yes. And you want Dr. Farone here
23 after lunch?
24 THE COURT:
25 Yes, I do.
26 (In open court:)
27 THE COURT:
28 I will take the tender and the
29 objections voiced at the bench conference
30 under advisement.
31 I understand that we will employ the
32 time between now and the luncheon recess

1 reading documents to the jury?
2 MR. RUSS HERMAN:
3 That is correct, Your Honor.
4 THE COURT:
5 Okay. Dr. Farone, you can step
6 down. You can stay in the courtroom if
7 you choose, if they want you to, or you
8 can wait outside in the corridor.
9 But we will need you after the lunch
10 recess; okay?
11 THE WITNESS:
12 Yes.
13 (The witness steps down from the
14 witness stand.)
15 THE COURT:
16 There is a little shift in the
17 procedure, and you will understand why at
18 the luncheon recess; okay?
19 Are we ready to proceed?
20 Mr. Carter?
21 MR. CARTER:
22 We are, Your Honor.
23 I'm prepared, Your Honor, if Your
24 Honor pleases?
25 THE COURT:
26 You may proceed.
27 MR. CARTER:
28 Good morning, ladies and gentlemen of
29 the jury. My name is Ken Carter.
30 Your Honor, we have several documents
31 to be read to the jury this morning. The
32 ones to be read have not yet been

1 admitted, and I am going to cite those,
2 Your Honor, and of course allow action
3 accordingly for admission.
4 If Your Honor pleases, the first
5 exhibit is Scott Exhibit 1781.01.
6 If Your Honor pleases, we would like
7 the first page to be displayed to Your
8 Honor and counsel.
9 THE COURT:
10 Where is the exhibit?
11 SPECIAL MASTER GIANNA:
12 Do you have a hard copy?
13 MR. LOUIS GERTLER:
14 These have my notes on it.

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15 MR. WILLIAMS:
16 Your Honor, to short-circuit things,
17 we are not going to object to it. So as
18 long as the exhibit is properly displayed,
19 we are fine.
20 THE COURT:
21 With no objection, the document will
22 be received into evidence.
23 MR. CARTER:
24 Thank you, Your Honor.
25 If Your Honor pleases, may we be
26 allowed to publish the first page of
27 1781.01?
28 THE COURT:
29 You may publish it.
30 MR. CARTER:
31 Carl, if you would, would you
32 highlight "The Effect of Changed

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1 Deliveries" and the date and the report
2 number?
3 Again, it may be somewhat blurred for
4 members of the jury. I hope I'm not
5 blocking you, am I? Thank you.
6 It reads: The Effect of Changed
7 Deliveries at Constant Pressure Drop on
8 Human Smoking Pattern. Report No. RD
9 837-R. 3.11.1971.
10 Carl, if you would go on to highlight
11 the rest of the first page?
12 It reads: Research and Development
13 Establishment, Southampton, Brown &
14 Williamson, November 22nd, 1971, Research
15 Library.
16 This confidential report is the
17 property of British American Tobacco
18 Company, Limited, and must not be copied
19 or shown to unauthorized persons.
20 If Your Honor pleases, we would like
21 to have page three published?
22 THE COURT:
23 You may publish it.
24 MR. CARTER:
25 Thank you, Your Honor.
26 Carl, if you would kindly highlight
27 the date and the heading?
28 Now, if you would go on that same
29 page, Carl, and highlight summary and
30 recommendations and the first two
31 paragraphs? It ends at "cigarette."
32 Summary and Recommendations:

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1 A test has been devised using
2 existing techniques to show whether a
3 panel of smokers would compensate by their
4 puffing and inhaling behavior for reduced
5 deliveries of TPM and nicotine.
6 The test took the form of a
7 comparison between two cigarettes of
8 similar pressure drop but differing
9 deliveries of TPM and nicotine.
10 It was found that there is indeed a
11 degree of compensation for the reduced

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12 delivery.
13 The panel as a whole took larger
14 puffs from the lower delivery cigarette,
15 inhaled the smoke more deeply, and held
16 the smoke in the lungs for a longer time.
17 The six individual panel members
18 compensated for changed delivery in
19 different ways, some by increased volumes,
20 and others by increased numbers of puffs
21 on the lower delivery cigarette.
22 No attempt has been made to quantify
23 the effect of the compensation in terms of
24 smoke deliveries because, in the absence
25 of a smoking machine which will accurately
26 reproduce any given human smoking pattern,
27 it is not possible to take account of
28 differences in puff profile or in the
29 spacing of puffs down the cigarette.
30 Carl, if you would, and if Your Honor
31 pleases, we would like to publish page
32 four?

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1 THE COURT:
2 You may publish it.
3 MR. CARTER:
4 Carl, if you would kindly highlight
5 beginning with the word "Publication" and
6 ending with the word "cigarette." It's
7 about the fourth line from the top. All
8 right, if you would highlight it, please?
9 Publication of, quote, tar, closed
10 quote, and nicotine deliveries has led
11 consumers to assume that switching to a
12 lower delivery brand will of necessity
13 reduce their intake of smoke.
14 It becomes important to know whether
15 this assumption is true. There is in fact
16 some evidence to the contrary.
17 Ashton and Watson, parens, one,
18 closed parens, found that a group of
19 subjects smoking a low nicotine cigarette
20 took more frequent puffs than a second
21 group smoking a high nicotine cigarette,
22 and that both groups achieved very similar
23 nicotine intakes.
24 Because of the increased puffing
25 frequency, the low nicotine cigarette was
26 smoked in a shorter time than the high
27 nicotine cigarette.
28 Your Honor, that's all we have for
29 Scott Exhibit 1781.01 from the British
30 American Tobacco Company dated November
31 3rd, 1971.
32 THE COURT:

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1 Do defendants wish to have any
2 portions of that document published to the
3 jury?
4 MR. WILLIAMS:
5 Yes, we do, Your Honor.
6 THE COURT:
7 Mr. Williams?
8 MR. WILLIAMS:

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9 Good morning, ladies and gentlemen.
10 Jack Williams with Brown & Williamson
11 Tobacco Company.
12 Ted, could we go to page six under
13 the "Discussion" section?
14 Your Honor, may we publish page six?
15 THE COURT:
16 Yes.
17 MR. WILLIAMS:
18 Discussion: The results show that
19 there was a highly significant difference
20 between the subjects in all the measured
21 parameters.
22 Your Honor, may we publish page
23 eight?
24 THE COURT:
25 Yes.
26 MR. WILLIAMS:
27 Subject No. 1 showed little
28 compensation for changed delivery and
29 smoked both cigarettes in an apparently
30 similar manner.
31 There is no evidence in Table 5 of
32 any dramatic difference between the two

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1 cigarettes with regard to the spacing of
2 the puffs.
3 It has not been possible to take
4 account of the puff profiles, which could
5 influence the deliveries of TPM and
6 nicotine from puffs of the same volume and
7 duration.
8 It is hoped that the actual intake of
9 smoke components by the smokers can be
10 measured when a system for accurately
11 duplicating the human smoking behavior is
12 available.
13 May we go to page nine and publish
14 page nine, Your Honor?
15 THE COURT:
16 You may publish it.
17 MR. WILLIAMS:
18 Could you just blow up the whole
19 thing, Ted?
20 References. And I will just let the
21 jury read it.
22 I think that's good. Thank you, Your
23 Honor. That completes the defendants'
24 reading.
25 THE COURT:
26 Next document?
27 MR. CARTER:
28 Yes, Your Honor. We would like to go
29 to, if Your Honor pleases, Scott Exhibit
30 3406. It's a Philip Morris document. It
31 has not yet been admitted.
32 MR. SHOLES:

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1 Clean copy objection, Your Honor.
2 THE COURT:
3 Put it on the screen.
4 Mr. Sholes, does your objection
5 relate only to the cover sheet or some

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6 other sheets?
7 MR. SHOLES:
8 I believe that's correct, Your Honor.
9 THE COURT:
10 Only the cover sheet?
11 MR. SHOLES:
12 Yes.
13 THE COURT:
14 Put the document on the screen,
15 please, on my screen.
16 Clean copy? Have you a copy,
17 Mr. Carter? Have you a copy of the
18 document?
19 MR. CARTER:
20 I have a copy, Your Honor.
21 THE COURT:
22 Look at the cover sheet.
23 MR. CARTER:
24 Yes, Your Honor.
25 MR. STEPHEN HERMAN:
26 May we approach, Your Honor?
27 THE COURT:
28 Yes.
29 (At sidebar:)
30 MR. STEPHEN HERMAN:
31 I think that Philip Morris, at least
32 Mr. Gay has represented several times that

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1 whatever is on their web site, that is
2 their clean copy of the document.
3 THE COURT:
4 What does it say? Flip charts, blue
5 file cabinet, doctor somebody, middle,
6 doctor --
7 MR. STEPHEN HERMAN:
8 I think that's part of the document,
9 though, because this is how it's listed on
10 the web site.
11 THE COURT:
12 Talk given by doctor something,
13 New York brief talk given by -- '74
14 stockholders meeting.
15 MR. SHOLES:
16 I think that's what it says, Judge.
17 THE COURT:
18 I don't think any of that is
19 prejudicial, Mr. Sholes. I'm going to
20 overrule your clean copy objection.
21 Any other sheets?
22 MR. SHOLES:
23 I have seen some things in here, but
24 I don't believe those are the pages you
25 are going to display; is that right?
26 MR. STEPHEN HERMAN:
27 Right.
28 MR. SHOLES:
29 We accept the Court's ruling without
30 objection.
31 THE COURT:
32 All right.

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1 (In open court:)
2 THE COURT:

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3 The objections are overruled. The
4 document will be received.
5 MR. CARTER:
6 Thank you very much, Your Honor.
7 If Your Honor pleases, may we publish
8 the first page, the heading?
9 Carl, if you would kindly highlight
10 the heading and the date for the members
11 of the jury?
12 Some Unexpected Observations on Tar
13 and Nicotine and Smoker Behavior, March 1,
14 1974.
15 With Your Honor's permission, we
16 would like to publish page two?
17 THE COURT:
18 You may publish it.
19 MR. CARTER:
20 If you would, Carl, you can highlight
21 everything on that page. It's not very
22 much.
23 We have long assumed:
24 (1) tar equals taste.
25 (2) taste patterns are changing in
26 direction of low delivery cigarettes.
27 (3) FTC test results indicate what
28 people are getting from their cigarettes.
29 (4) people smoke to get nicotine;
30 more nicotine will compensate for less
31 tar.
32 If Your Honor, please, we would like

1 to publish page seven?
2 THE COURT:
3 You may publish it.
4 MR. CARTER:
5 Carl, if you would kindly highlight
6 the entire page, it would be much clearer
7 to the jury. And I won't read all of it,
8 Your Honor, just certain portions of it.
9 In a controlled study, 72 filter
10 smokers were given either higher or lower
11 delivery cigarettes for four weeks.
12 (A) their measured intake changed
13 less than predicted from FTC tar and
14 nicotine ratings.
15 I will skip down to (B): They
16 adjusted by changing the number of
17 cigarettes and/or lengths smoked to come
18 more closely to their previous smoke
19 intakes.
20 But there was great variation among
21 smokers in adjusting. Some did not change
22 at all. Others changed drastically.
23 Scatter plot.
24 If Your Honor pleases, we would like
25 to publish page ten?
26 THE COURT:
27 You may publish it.
28 MR. CARTER:
29 Carl, if you would kindly highlight
30 the three lines from "Observation 1" and
31 the two sentences below?
32 Observation 1: Puff profiles vary

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from smoker to smoker.

And differ greatly from the standard smoking machine.

If you would highlight the last, please:

And differ greatly from the standard smoking machine.

MR. CARTER:

Thank you.

If Your Honor pleases, we would like to publish on behalf of the plaintiffs page 14?

THE COURT:

You may publish it.

MR. CARTER:

Thank you, Your Honor.

Carl, if you would kindly highlight for the jury the entire chart?

I won't attempt to read the entire cart, but I will give the jury a chance to read it.

I would start at the top, please. I am only going to read the first sentence, Carl. Come all the way down below that, please. Thank you.

Estimated average tar and nicotine intakes for twenty-four male students who smoked six brands of cigarettes with the puff recorder while performing psychological tasks.

And then there is the chart.

I will read the last sentence

underneath the chart with an arrow pointing to the last two columns:

Smokers are taking in more than FTC ratings.

And the last column, "FTC Tar" shows two columns below that heading, one column is machine and the other column is smokers.

Under machine 3.7, under smokers 8.3.

Under machine 11.7, under smokers 19.1.

Under machine 10.9, under smokers 16.6.

Under machine 18.2, under smokers 23.1.

Under machine 19.9, under smokers 26.6.

Under machine 16.2, under smokers 19.9.

If Your Honor pleases, I would like to have published for the jury page 18, which is the conclusion?

THE COURT:

Go ahead and publish it.

MR. CARTER:

Thank you.

Now, Carl, if you would go back to page 17, if Your Honor allows us to publish page 17, Summary?

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30 THE COURT:
31 You may publish it.
32 MR. CARTER:

1 Thank you, Your Honor.
2 Now, Carl, if you would, we would
3 like to enlarge each one individually to
4 the jury so they can see them clearly.
5 Number one?
6 Would you kindly do number two?
7 Number three?
8 Number six?
9 Number seven?
10 If you would highlight No. 4 and 5
11 together?
12 Your Honor, that's all we have for
13 document Exhibit 3406 dated March 1st,
14 1974.
15 THE COURT:
16 Defense counsel wish to have any
17 portions of that document read to the
18 jury?
19 MR. SHOLES:
20 Nothing further, Your Honor.
21 MR. CARTER:
22 If Your Honor pleases, we would like
23 to have displayed Document 4370? It's not
24 yet been admitted.
25 MR. WITTMANN:
26 Your Honor, we have an objection to
27 this document. May we approach?
28 THE COURT:
29 Yes. I would like to have the
30 document.
31 (At sidebar:)
32 MR. BRUNO:

1 Here is the document, Judge.
2 MR. WITTMANN:
3 Your Honor, the first objection is
4 that the warning on the advertisement is
5 covered by a sticker, so it's not the way
6 it was presented by the public.
7 THE COURT:
8 The warning is covered up by what?
9 MR. WITTMANN:
10 The sticker covers the warning which
11 should have been on the ad. So it's
12 misleading under Rule 403 by leaving out
13 the warning. That's the first objection
14 we have.
15 Second, this document is irrelevant
16 to the class representatives who never
17 smoked Vantage cigarettes.
18 And finally, Your Honor, it violates
19 due process to try claims based on Vantage
20 cigarettes when no member of the class
21 will ever testify on Vantage, and the
22 defendants have no opportunity to cross-
23 examine anybody who ever smoked Vantage.
24 THE COURT:
25 Is this bottom left-hand corner
26 window a part of the ad or was that

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27 superimposed?
28 MR. LEGER:
29 Judge, that was how the document was
30 produced to us by RJR. We do not know if
31 that's part of the ad or not.
32 I assume, Judge, by reading it that

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1 this is some type of a report to RJR as to
2 how many times it appeared. It's really
3 sitting in RJR's files showing, you know,
4 that this is an ad. I don't think there
5 was any intention to block anything.
6 I mean, we don't know. This is not
7 prepared -- it was produced in this
8 manner.
9 MR. WITTMANN:
10 But it is misleading by not having
11 the warning as it appeared. This document
12 does not appear as it appeared in the
13 advertisement.
14 THE COURT:
15 I understand that. But if it's your
16 document and it was produced in this
17 fashion, what is there to object to?
18 I understand it's been altered, but
19 it's your document. You altered it.
20 MR. WITTMANN:
21 It's our document, no question about
22 that. But this particular version of it
23 simply does not give a fair representation
24 to the jury as to how the advertisement
25 actually appeared.
26 THE COURT:
27 The objection is overruled.
28 (In open court:)
29 THE COURT:
30 The objection is overruled,
31 Mr. Carter.
32 MR. CARTER:

14682

1 Thank you very much, Your Honor.
2 If Your Honor pleases, we would like
3 to have published for the jury Scott
4 Exhibit 4370?
5 THE COURT:
6 You may publish it.
7 MR. CARTER:
8 Thank you, Your Honor.
9 Carl, would you kindly highlight the
10 first two paragraphs starting with
11 "Nobody" and ending with "about."
12 Nobody these days is telling you not
13 to give up smoking.
14 But if you've given it up more times
15 than you'd like to remember, the chances
16 are you enjoy it too much to want to give
17 it up at all.
18 If you're like a lot of smokers these
19 days, it probably isn't smoking that you
20 want to give up. It's some of that,
21 quote, tar, unquote, and nicotine you've
22 been hearing about.
23 If you would go to the next paragraph

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24 and the sentence after it, please?
25 So you tried cigarettes which were
26 low in, quote, tar, unquote, and you found
27 yourself checking every once in a while to
28 see if they were still lit. Which drove
29 you right back to your regular brand.
30 Now, there is Vantage.
31 Your Honor, that's all we have for
32 Scott Exhibit 4370, which was dated

1 February 2nd, 1976. 4370.
2 THE COURT:
3 Do defendants wish to read any
4 portions of that to the jury?
5 MR. WITTMANN:
6 No, Your Honor.
7 MR. CARTER:
8 At this time, Your Honor, if Your
9 Honor pleases, we would like to have
10 displayed Scott Exhibit 2467?
11 MR. WILLIAMS:
12 May we approach, Your Honor?
13 THE COURT:
14 Yes.
15 (At sidebar:)
16 THE COURT:
17 Objection?
18 MR. WILLIAMS:
19 Yes, Your Honor. Our pretrial
20 objections were based on relevance,
21 Article 403 and hearsay. And I want to
22 emphasize the hearsay objection.
23 This is purportedly a British
24 American Tobacco document, and I know we
25 have addressed that issue before in the
26 context of certain documents.
27 But this document we don't know was
28 in B&W's files, and there is no
29 authenticating witness to overcome the
30 business records exception to the hearsay
31 rule for this document.
32 So a hearsay objection is valid in

1 connection with this document.
2 THE COURT:
3 Who is Mr. Short?
4 MR. WILLIAMS:
5 I assume he is a British American
6 Tobacco person, but I don't know that.
7 THE COURT:
8 Response, Mr. Gertler?
9 MR. LOUIS GERTLER:
10 Your Honor, we know this is because
11 it talks about -- this document
12 was developed, this plan was developed
13 based upon a meeting held in which it was
14 attended the Number Ones and marketing
15 directors from North America and other
16 countries. So North America meaning Brown
17 & Williamson, which is their North
18 American affiliate.
19 Additionally, Your Honor, throughout
20 the document they talk about United States

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21 issues.
22 For example, on page two he says for
23 example, in the U.S.A., it has been
24 forecast that by 1990, over 80 percent of
25 brands will be in the low tar category.
26 There are several other cites in
27 that, Your Honor.
28 Also on page four, they talk about
29 this plan which has been put forth by the
30 Associated Companies.
31 The Associated Companies is in this
32 paragraph, Associated Companies is

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1 mentioned in this paragraph.
2 As Mr. Williams well knows, the
3 Associated Companies is all the companies
4 under the BAT umbrella, including B&W.
5 So this is a plan put forth by the
6 entire BAT system, all of the BAT
7 companies including B&W.
8 THE COURT:
9 Any dispute but that in 1977, which
10 is when this document was -- or the date
11 that appears on the document --
12 MR. WILLIAMS:
13 I'm sorry?
14 THE COURT:
15 -- that there was a relationship
16 between BAT and Brown & Williamson?
17 MR. WILLIAMS:
18 No, I don't dispute that, Your Honor.
19 THE COURT:
20 The objection is overruled. The
21 exhibit will be received.
22 MR. WILLIAMS:
23 Thank you, Your Honor.
24 (In open court:)
25 THE COURT:
26 Mr. Carter?
27 MR. CARTER:
28 Thank you, Your Honor.
29 If Your Honor pleases, we would like
30 to have published page one?
31 THE COURT:
32 You may publish it.

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1 MR. CARTER:
2 Of Exhibit 2467.
3 2467, yes, 2-4-6-7.
4 If you would, Carl, please highlight
5 the heading. In addition, the first three
6 lines, if you will?
7 In line with the new policy for
8 marketing agreed at Hot Springs,
9 strategies were evolved which were, quote,
10 positive and explicit in the field of
11 smoking and health, unquote.
12 Carl, on that same page, if you would
13 kindly go down to the paragraph marked one
14 and headed "Future Prospects," that entire
15 paragraph?
16 The new approach to marketing,
17 supported by suitable strategies, offers

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18 distinct opportunities to create brands
19 and products which reassure consumers by
20 answering to their needs.
21 Overall marketing policy will be such
22 that we maintain faith and confidence in
23 the smoking habit, whether brand choice is
24 traditional or not in particular markets.
25 This means that BAT will not remain
26 on the defensive, by simply reacting to
27 alleged, quote, health, unquote, hazards
28 and related competitive challenges.
29 Colon: Instead we shall actively seek out
30 all worthwhile prospects for brand and
31 product reassurance in marketing
32 throughout the world.

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1 Carl, if you would kindly go to our
2 page three?
3 Your Honor, if we may publish it?
4 THE COURT:
5 You may publish.
6 MR. CARTER:
7 Carl, if you would kindly highlight
8 to the jury the paragraph starting with
9 small letter (b), Communication.
10 (b) Communication. All work in this
11 area should be directed towards providing
12 consumer reassurance about cigarettes and
13 the smoking habit. This can be provided
14 in different ways, e.g., such as, by
15 claimed low deliveries, by the perception
16 of low deliveries and by the perception
17 of, quote, mildness, unquote.
18 Furthermore, advertising for low
19 delivery or traditional brands should be
20 constructed in ways so as not to provoke
21 anxiety about health, but to alleviate it,
22 and enable the smoker to feel assured
23 about the habit and confident in
24 maintaining it over time.
25 If Your Honor pleases, we would like
26 to highlight for the jury and publish page
27 seven of this same document?
28 THE COURT:
29 You may publish it.
30 MR. CARTER:
31 Carl, for the jury, would you kindly
32 highlight the paragraph beginning with

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1 "Much more," and then go to the end of the
2 page? And enlarge it, please. Thank you.
3 Much more work has been done on the
4 perceived benefits of smoking cigarettes,
5 parentheses, qualitative and quantitative,
6 closed parens. This work could be
7 extended and improved.
8 Perceived benefits are better
9 established as the result of the
10 accumulation of many results over time.
11 These are generally consistent, and do not
12 vary substantially between one developed
13 country and another.
14 In brief, they are:

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15 Starting to smoke.
16 First, adult status.
17 Rebellion against authority, parens,
18 NB, note well, colon, a benefit for the
19 smoker, if not for the authority, closed
20 parens.
21 Modernity.
22 Economic status.
23 Female emancipation.
24 Carl, if you would kindly go to page
25 eight?
26 If Your Honor pleases, may we be
27 allowed to publish it?
28 THE COURT:
29 You may publish it.
30 MR. CARTER:
31 And highlight "Tactics."
32 And Your Honor, we only have a couple

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1 more under this document and we can honor
2 your request for a break.
3 THE COURT:
4 All right.
5 MR. CARTER:
6 Carl, if you would kindly highlight
7 just the first part. That's fine. And
8 enlarge, if you could? Or is that as
9 large as you can get? That's fine.
10 Tactics: The main objective for all
11 tactics on publicity is directed towards
12 achieving reassurance amongst a variety
13 of, quote, publics, closed quote,
14 including smokers particularly, in the
15 face of the increasing social
16 unacceptability of smoking. Increasing
17 social unacceptability of smoking.
18 A few options were outlined in the
19 IDB paper following the October
20 conference: Further recommendations
21 emerged as a result of the meeting in
22 March. Particular reference was made to
23 the utilization of, quote, pressure
24 groups, unquote, whom tobacco
25 manufacturers could influence, to bring
26 favorable opinion to bear upon the
27 industry.
28 These include:
29 (a) segments of the tobacco
30 distributive trade.
31 (b) tobacco growers.
32 (c) suppliers/advertising and

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1 research agencies/the media.
2 (d) sports and cultural organizations
3 in receipt of sponsorship money.
4 If Your Honor pleases, we would like
5 to go on to page nine to continue this
6 list?
7 THE COURT:
8 You may publish it.
9 MR. CARTER:
10 Thank you.
11 (e) favorable medical opinion where

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it exists.
(f) quote, individual liberty, unquote, groups directed towards freedom of choice, democracy, et cetera.
(g) industries with problems related to our own, such as health and tax.
(h) employee unions, but with the reservation that unless the initiative comes from within those unions, it could be seen as employer pressure and be counterproductive.
Carl, if you would highlight the remainder of that page and end with "leaflets"?
Finally, in order to communicate well-attested and, quote, proven, unquote, benefits of smoking, the most promising vehicles appear to be:
Reputable research journals.
Public relations releases to the media and specific identified groups or

opinion leaders.
Symposia/lectures.
Or, to the smoker direct via, by way of, pack and outer inserts, leaflets.
The last paragraph, if you will, for the jury, Carl?
In general, it is advocated that communication by third parties or by the industry, parentheses, as required, closed parentheses, is best, and that a high standard of publication should be reached in any form of presentation to the public.
Signed, P. L. Short, dated April 14th, 1977. That's Exhibit 2467, Scott Exhibit, Your Honor.
And that's the final exhibit for this morning.
THE COURT:
Do defendants wish to read any portions of that document to the jury?
MR. WILLIAMS:
Yes, we do, Your Honor.
THE COURT:
Proceed.
MR. WILLIAMS:
Your Honor, may we publish page one?
THE COURT:
You may publish it.
MR. WILLIAMS:
And two, Your Honor, because the sentence goes to the next page?
THE COURT:

Yes, you may publish it.
MR. WILLIAMS:
Can we highlight under "The Consumer," Ted?
The Consumer: The need for increased, regular research on all aspects of smoker and nonsmoker attitudes and behavior, as affected by the health

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9 situations in all countries, was agreed.
10 It must be remembered, though, that
11 quantity of information is not important,
12 but quality and relevance. We have to use
13 the information available to us, and
14 creativity, flair and timing should not be
15 impeded. These are the prime
16 requirements.
17 Concepts and Constituents: The
18 paramount importance of arriving at brand
19 concepts which meet known consumer needs
20 was fully recognized.
21 While product improvements, via
22 lowered deliveries and technical advances
23 will continue to be sought vigorously, we
24 must first develop brand concepts, with
25 appropriate product constituents, which
26 are relevant to the consumer, and then
27 bring in R&D to meet these requirements.
28 Your Honor, may we publish page
29 three?
30 THE COURT:
31 Yes.
32 MR. WILLIAMS:

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1 Marketing, R&D and Product
2 Development: There are two main levels of
3 development work, in relation to
4 marketing.
5 (a) Includes fundamental research
6 work, and ranges from analytic work on
7 major competitors, parens, especially, for
8 example, on the U.S. side in order to
9 achieve knowledge of the technology of
10 products such as Marlboro, Winston and
11 Merit, to laboratory projects on product
12 design in order to reduce or eliminate the
13 alleged harmful ingredients in smoke.
14 Your Honor, may we publish page
15 seven?
16 THE COURT:
17 Yes.
18 MR. WILLIAMS:
19 Much more work has been done on the
20 perceived benefits of smoking cigarettes,
21 paren, qualitative and quantitative,
22 closed paren. This work could be extended
23 and improved.
24 Your Honor, may we go to page eight?
25 THE COURT:
26 Yes.
27 MR. WILLIAMS:
28 Continuing to smoke:
29 Relieves stress.
30 Reduced aggression.
31 Relaxes.
32 Aids concentration.

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1 Gives social confidence.
2 Projects self-image.
3 Relieves boredom, colon, acts as a
4 stimulus.
5 Relieves loneliness, colon, acts as a

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6 comforter.
7 Your Honor, that's all defendants
8 have on Document 2467.
9 THE COURT:
10 There are some things I need to do
11 out of your presence, and that's what's
12 going to happen this afternoon. So you
13 folks are finished for the day.
14 Well, it was worth the twenty minutes
15 wasn't it, after noon?
16 So let's report at 9:30 tomorrow
17 morning. Be prompt.
18 Mr. Reynolds, I have something for
19 you.
20 See you tomorrow.
21 (In open court without a jury
22 present:)
23 THE COURT:
24 Let the record reflect the jury has
25 left the courtroom.
26 Anything for the record by plaintiffs
27 counsel as a result of the morning's
28 proceedings?
29 MR. STEPHEN HERMAN:
30 Question, Your Honor: Does Your
31 Honor want us to reply in writing to the
32 brief that defendants filed yesterday

1 afternoon?
2 THE COURT:
3 I'm going to address all of that.
4 MR. STEPHEN HERMAN:
5 Okay, I'm sorry.
6 THE COURT:
7 Anything else?
8 MR. STEPHEN HERMAN:
9 No.
10 THE COURT:
11 Defendants?
12 MR. BELASIC:
13 One thing, Your Honor.
14 When Jack was reading the last points
15 about reducing loneliness and et cetera, I
16 noticed several plaintiffs counsel
17 laughing, snickering, shaking their head.
18 I got to see a lot of that example
19 during my cross-examination when I was
20 standing very close to the plaintiffs
21 lawyers.
22 And I just want to note that when I
23 start seeing it, I'm going to start
24 putting it on the record. Because they
25 shouldn't be allowed to do nonverbal
26 communications.
27 Obviously all of us on both sides
28 feel strongly about the case, and I'm sure
29 I've shaken my head at times when a
30 plaintiffs lawyer asked a question.
31 But we really have to keep a poker
32 face and not try to communicate to the

1 jury through laughter or other nonverbal
2 expressions.

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3 THE COURT:
4 No nonverbal communications between
5 counsel and the jury.
6 Anything else?
7 MR. WITTMANN:
8 No, Your Honor.
9 THE COURT:
10 All right. Several things.
11 Mr. Gianna is planning to do the
12 Special Master hearing on the B&W
13 privileged document at lunchtime today.
14 MR. WILLIAMS:
15 Yes, Your Honor.
16 THE COURT:
17 Starting shortly.
18 We will recess until 1:30, at which
19 time I will entertain argument on the
20 objected-to demos to be used in connection
21 with Farone's testimony and the exhibits
22 that are still objected to in connection
23 with Farone's testimony.
24 I have some questions about that.
25 Mr. Herman, I have a note to ask
26 whether or not the plaintiffs have
27 responded to the defendants' motion in
28 limine as to Farone's testimony, and I
29 don't have anything from plaintiffs in
30 response to that motion in limine.
31 So if you can get something to me as
32 soon as you can get it, the more time I

1 will have to deal with it because I intend
2 to rule on that --
3 MR. STEPHEN HERMAN:
4 Yes, Your Honor.
5 THE COURT:
6 -- maybe this afternoon.
7 And I have a list of demonstrative
8 aids that may be used by plaintiffs with
9 Dr. Farone, and in the right-hand column
10 it indicates the sources of the
11 demonstrative.
12 I would want to ask you, the first
13 question when we resume at 1:30, are any
14 of those source documents not on Farone's
15 reliance list. And if some of them are
16 not, I want you to be able to identify
17 them.
18 MR. STEPHEN HERMAN:
19 I will be able to do that, Your
20 Honor.
21 THE COURT:
22 All right.
23 Any questions about what's happening
24 this afternoon from either side?
25 MR. WITTMANN:
26 No, Your Honor.
27 THE COURT:
28 Dr. Farone needs to be here this
29 afternoon. I have already told him that.
30 And Special Master Gianna needs whom
31 for the B&W hearing?
32 SPECIAL MASTER GIANNA:

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Brown & Williamson and a plaintiffs lawyer.

THE COURT:

Okay.

(Whereupon, the hearing recesses at 12:23 p.m.)

REPORTER'S CERTIFICATE

I, NICHOLAS A. MARRONE, CCR, Registered Merit Reporter, do hereby certify that the foregoing proceedings were reported by me in shorthand and transcribed under my personal direction and supervision, and is a true and correct transcript, to the best of my ability and understanding.

That I am not of counsel, not related to counsel or the parties hereto, and not in any way interested in the outcome of this matter.

_____

NICHOLAS A. MARRONE (CCR 21011)
CERTIFIED COURT REPORTER
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